

NOV 2003

STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT

TERM

IN THE MATTER OF:

MI SUP CT No. 122666

KIARA HERRON.,

Circuit Ct No.98-613188-NA

KEANGELO LAGRONE

KEMARIA LAGRONE AND

KEJUAN JEFFERSON

Minor Children /

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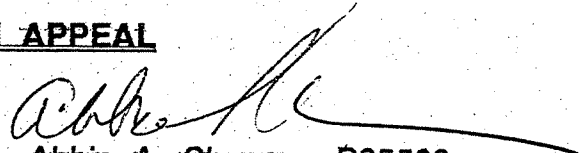
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### **Cases**

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### **Michigan Court Rules**

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## **STATEMENT OF BASIS OF JURISDICTION**

In an order dated September 25, 2003, this Honorable Court granted the Appellant's Application for Leave to Appeal pursuant to MCR 7.302.

## **STATEMENT OF ISSUES PRESENTED**

Whether a putative father has standing in a Juvenile Code child protective proceeding to request a paternity determination where the subject children already have a legal father?

Appellee answers "yes"

Trial Court answered "yes"

In this case, what is the legal significance of the trial court's finding that the putative father is the biological father of the three children?

Appellee states there is legal significance

Trial court stated there is legal significance

Whether the Juvenile Court rules provide greater standing to a putative father than is provided by the Paternity Act?

Appellee answers 'yes'

Trial Court answered 'yes'

Given that MCR 3.921(C)(2)(b) authorizes a family division judge to determine that a putative father is the child's 'natural' father, does the rule authorize that judge to determine that the putative father is the legal father or must the putative father file a complaint pursuant to the Paternity Act?

Appellee answers that Family Division judge is authorized to determine that the putative father is the legal father under certain conditions.

Trial Court answered 'no'

Whether *In re CAW* applies to this case?

Appellee answers 'Yes'

Trial court did not address.

### **COUNTERSTATEMENT OF FACTS/PROCEEDING**

A petition was filed with the Oakland County Family Court/Juvenile Division on or about April 25, 2002 which requested the termination of all parental rights to the children Kiara Herron, KeJuan Jefferson, KeAngelo LaGrone and KeMaria LaGrone. (See Appellant's Appendix, p.10-14a). The Court appointed counsel who appeared for Larry LaGrone (KeAngelo and KeMaria) and for Frederick Herron (Kiarra Herron) who were stated by the mother to be the fathers of the above listed children. The Juvenile Court Referee stated that she would only proceed as the Richard Jefferson who was determined to be the legal father of all of the children despite the conceptions of the children by the above named fathers during the pendency of the mother's marriage to Richard Jefferson while he was incarcerated. (See Appellant's Appendix, p. 16a). At a date scheduled for Trial, the Court indicated that as Richard Jefferson was married to mother at the time of the birth of each and all of the children that the legal presumption is that Mr. Jefferson is the legal father of all children (See Appellant's Appendix, p. 18-20a). Further, Mr. LaGrone and Mr. Herron would not be part of the proceeding (See Appellant's Appendix, p.20a). At that point, counsel for putative father LaGrone asked the court to

determine pursuant to MCR 5.903(4) that Mr. Jefferson was not the natural father of the LaGrone children. The Court took testimony from mother who stated under oath that Richard Jefferson was not the biological father of the LaGrone children and that Larry LaGrone was the biological father of the LaGrone children. (See Appellant's Appendix, p. 23a). Further, the Family Independence Agency (FIA) further stated on the record that a DNA finding indicated that Larry LaGrone was the father of the Lagrone children.

The Court then determined only that the biological father of the Lagrone children was Larry Lagrone (See Appellant's Appendix, p 23a). Further, counsel for Mr. Jefferson stated that his client did not want to be involved in the proceedings as these were not his biological children (See Appellant's Appendix, p. 24a). Counsel for Herron requested that father Herron be given a blood test. (See Appellant's Appendix, p. 24a). Mr. Herron was given 14 days to establish paternity.

Judge Young granted the Motion for Determination of Legal Father (See Appellant's Appendix, 14-15a and 4-8a).

The Michigan Supreme Court requested that this appeal address some very specific issues with regard to the state of legal fathers in the Juvenile Court proceedings (See Appellant's Brief, p. 3). They are addressed below.

## ISSUE 1

Does a putative father have standing in a Juvenile Code child protective proceeding to request a paternity determination where the subject children already have a legal father?

Standard of Review: Questions of law are reviewed *de novo*. People v. Stevens, 460 Mich 626, 597 NW2d 53 (1999). This is the standard of Review for all issues listed below.

MCR 3.903(A)(23) defines the 'putative father' as "a man who is alleged to be the biological father of a child who has no father as defined in MCR 3.903(A)(7). " "Father" is defined under MCR 3.903(A)(7) [See Appellant's Brief, p.5]. Further, MCR 3.921 allows the court in a child protective proceeding to determine that the putative father is the natural(biological) father of the minor and further that said putative/natural father be allowed 14 days to establish his legal relationship to the child under MCR 3.903(A)(7).

The Court of Appeals has held that the trial court has the authority to make a determination of paternity in child protective proceedings. In re Montgomery, 185 Mich App 341 (1990) and In re CAW, 253 Mich App 629, 636-637, rev'd 469 Mich 192, 665 NW2d 475 (2003). The Court of Appeals gave the court this authority in a case such as the present case by allowing the court to determine that a was child born out of wedlock (not issue of the marriage) and then the court is authorized to determine the identity of the biological father and determine his legal rights in the neglect proceeding. In re CAW, 253 Mich App 629, 637-638. In re CAW addressed in Montgomery recognizes that the probate (now Family Court/Juvenile Division) court determined paternity in the child protective

proceeding by dismissing a legal father and determining another man to be the child's biological father (See Appellant's Brief, p.6). The Juvenile court in child protective proceeding can determine that a child is born out of wedlock and therefore determine, outside of the marriage in this case, the identity and rights of the biological father (See Appellant's Brief, p. 7).

In the instant case, the trial court has reached the same conclusion through the Court of Appeals' findings in Montgomery. In the present case, there is a preponderance of evidence (i.e., mother's statements, father's blood test, legal father's incarceration, legal father's statements on the record) that the legal father, Richard Jefferson, is not the biological father of the children and that Appellee, Larry LaGrone, is and must be determined to be the legal father and thereby have standing to participate in the child protective proceeding conferred upon him. The two above referenced cases give that authority to the Juvenile Court hearing officer. This is necessary both legally and in fairness to the putative/biological father who, in a child protective proceeding runs the risk of losing his parental rights without ever being allowed to participate in the proceeding. Further, the court must be certain that the true interested parties (i.e., an available putative/biological) has an opportunity to unification with his child.



## **ISSUE 2**

**In this case, what is the legal significance of the trial court's finding that the putative father is the biological father of three of the children?**

Once the putative father is determined to be the biological father of the children he is then in a legal position to commence a paternity action, or (see Issue 1) ask the court to determine that he is the legal father. He is further then able to intervene in the child protective proceeding, receive notification of any proceedings, request placement of the children with him, request involvement with the Family Independence Agency (e.g., a Parent/Agency Agreement to allow him to work toward reunification with the children if estranged, placement with his family, etc.).

In the present case, Larry LaGrone is first determined to be the biological father by testimony (and additionally DNA evidence) and thus he can proceed to have the court confer upon him the status of legal father in the Juvenile court. No further court proceedings are necessary as his paternity is therefore established.

## **ISSUE 3**

**Do the Juvenile Court rules provide greater standing to a putative father than is provided by the Paternity Act?**

Appellant argues that the Juvenile Court rules provide greater standing to a putative father than is provided by the Paternity Act (See Appellant's Brief, p. 11). In re CAW is cited for the proposition that a putative father is entitled to participate if at any time during the pendency of the proceeding the Court determines that the child has no father under MCR 5.903(A)(4). One might extract from that language that the Court recognizes that the potential for

a biological father to have his rights terminated to a child would dictate that such a father be allowed to participate in the juvenile protective proceeding. Further, if such biological father is available the Court may want to determine some financial responsibility of the father.

#### **ISSUE 4**

**Given that MCR 3.921(C)(2)(b) authorizes a family division judge to determine that a putative father is the child's 'natural' father, does the rule authorize that judge to determine that the putative father is the legal father or must the putative father file a complaint pursuant to the Paternity Act?**

In re Montgomery, 185 Mich App 341;460 NW2d 610(1990) was decided under the Juvenile Court Rules. Montgomery stands for the proposition that once the putative father is determined to be the biological father, he has standing to establish that he is the legal father in the neglect proceeding which is a Juvenile proceeding. The facts in Montgomery are analogous to the facts in the instant case in which the trial court, Referee Leigh, Oakland County Juvenile Court, made the finding that putative father, Larry LaGrone was the biological father of the children. Larry Lagrone's motion to be determined to be the legal father of the children was granted by Judge Joan Young (See Appellant's Appendix, p.7-8a). The Juvenile Court Rules allow for the determination that the child has been born out of wedlock (not issue of the marriage). In both the instant case and Montgomery testimony in a court of law indicated the 'married' father was not the biological father. Further, in both the instant case and Montgomery the putative father was determined to be the biological father. Under Montgomery and its

interpretation by the Court of Appeals the family division judge may determine that the putative father is the legal father.

### **ISSUE 5**

**Does In re CAW apply to this case?**


Appellant proposes that In re CAW 469 Mich 192, 665NW2d 475 (2003) applies to the instant case. In re CAW addressed the issue of whether the putative father had standing to intervene in a child protective proceeding under the juvenile code where the child had a legal father. The conclusion there was that the father would have had standing had he fulfilled the requirements (See Appellant's Brief, p.18). While that father sought to intervene post termination and further, never followed the requirements he was unable to claim standing. In the present case, putative father LaGrone has sought standing prior to any termination and further followed the requirements that the Court sought.

### **RELIEF REQUESTED**

Appellee seeks that this Court allow that In re CAW and In re Montgomery permitting a putative father standing in a child protective proceeding be followed. Further, the Family Court is authorized, through the Court Rules and the above referenced case law, to determine that a putative (biological) father be determined to be the legal father with standing to intervene and become an interested party in a child protective proceeding even while there may be a nonbiological father who has legal status through marriage to the mother.

Further, that Judge Joan E. Young's order and ruling be affirmed.

Respectfully submitted,



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